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debt, and the surplus remained in the hands of the mortgagee's attorney. *Held*, that since the plaintiff was equitably entitled to the payment of the surplus proceeds he could recover them from the attorney in an action for money had and received. *Rutherford v. Davis*, 28 So. Rep. 476 (Ala.).

To the general rule that a right equitable in its nature cannot be enforced by an action at law, there are two established exceptions. Where the old action of account would have lain to enforce what was substantially a trust, or where a wrongdoer becomes a constructive trustee for the person injured, *assumpsit* for money had and received is allowed. *Hancock v. Franklin Co.*, 114 Mass. 155; *Staat v. Evans*, 35 Ill. 455. These cases are rather anomalous, but in all there is a clear duty, though an equitable one, owing directly from the defendant to the plaintiff, on which to found the implied promise which is the basis of *indebitatus assumpsit*. In the principal case there is no such duty, since defendant's obligation was not to X, but to the mortgagee alone, and the total lack of privity should have been fatal to the action. *Robbins v. Fennell*, 11 Q. B. 248. In several American cases, however, where the depositor of a note for collection sued the sub-agent bank on the failure of the bank of deposit, the necessity of privity has been denied or ignored. *Metropolis Bank v. First Bank*. 19 Fed. Rep. 301.

REVIEWS.

THE RIGHTS, DUTIES, REMEDIES, AND INCIDENTS BELONGING TO AND GROWING OUT OF THE RELATION OF LANDLORD AND TENANT. In two volumes; with forms. By David McAdam, one of the Justices of the Supreme Court of the State of New York. Third edition. New York: Remick, Schilling & Co. 1900. pp. xiii, 856; x, 857-1768.

It is a long step from the first edition of Judge McAdam's *Landlord and Tenant*, which appeared in 1876 and consisted of four hundred pages, to the two compendious volumes now before us. The general scope and plan of the work is still much the same, nevertheless, as in the two prior editions. The present edition, however, is far more valuable than its predecessors, for not only does it bring down to date a branch of the law which is constantly being modified by statutory changes, but it also presents a much fuller discussion of the subjects treated and a broader field of quotations and references. The text of the book has in many places been entirely rewritten, and everywhere considerably expanded. The author considers his subject of landlord and tenant with great thoroughness and from various points of view. A discussion of the topics, among others, of tenure in general, leases, their validity, termination, assignment, and renewal, covenants, forfeiture, fixtures, emblements, and the doctrine of agency make up the first volume. In the second volume the chief subjects considered are principal and surety, rights and remedies of the landlord, trespass, easements, excavations, party walls, nuisance, waste, repairs, surrender, eviction, rights and remedies of the tenant, remedies of legal representatives, and distress. A collection of forms of leases, covenants, etc., with an index and a table of cases, complete the volume. The statement of the law on any particular point is accurate and concise, and is fully illustrated by references to and quotations from decided cases. The book does not often go deeply into theoretical discussions, but only gives an adequate statement of what the law is. This method, although it may not always be of great help to the student, satisfies the need of the lawyer — and it is for the practitioner that the book

is written. The system of arrangement is clear, and an excellent index makes the work most available for ready reference. Although many of the cases chosen for illustration are taken from the New York reports, and a large part of the text is devoted to peculiarities of the law of that state, yet there are many citations from a broader field, and the book gives usually an excellent statement of the law in other jurisdictions. In some few instances, however, Judge McAdam has stated as the general law a rule peculiar to New York. A flagrant example of this error is to be found on page 83, when it is said that if a tenant holds over the extent of his term without the landlord's permission, the latter may, at his election, treat the tenant as a trespasser or hold him as tenant for a renewed term upon the conditions of the prior lease as far as applicable. This is in accord with the decisions in New York, but the general rule is that he is a tenant at sufferance, and only upon the payment of rent, or some similar form of acknowledgment, can he be called a tenant from year to year. Moreover, he is never a trespasser, for his original entry was lawful. Again, the statement is made that an oral disclaimer of his landlord's title by a tenant for years does not work a forfeiture. This is law in England and in New York, but the prevailing doctrine in this country is the other way. *Willison v. Watkins*, 3 Pet. 43. In proportion to the whole work, however, these are but minor faults. In general, as has been said, the book is accurate and clear. Judge McAdam's work will doubtless prove valuable to the profession, and particularly so to those who practice law in New York state.

E. S. T.

HISTORICAL JURISPRUDENCE. An Introduction to the Systematic Study of the Development of Law. By Guy Carleton Lee, Ph. D. New York: The Macmillan Company. 1900. pp. xv, 517.

This book is of equal interest to the lover of history and to the student of law. Tracing as it does the foundation and development of legal principles in those countries whose systems of law have been of lasting impression upon the jurisprudence of modern civilization, their social conditions and political history are of necessity considered, law being, as the author says, "an outgrowth of the needs of man in society;" while at the same time legal principles and institutions are examined with sufficient minuteness to give to the lawyer a technical knowledge of the substantive law of those systems from which our present ideas are largely an outgrowth.

The book is divided into three main parts. Part I., dealing with the foundations of law, takes up in succession the legal systems of Babylonia, Egypt, Phœnicia, Israel, India, and Greece. The sources and history of the law of each of these countries is discussed, whether developed from mere custom, or adopted from other nations, or made in the process of political growth; and certain branches of the law are traced with especial care. These are such subjects as contracts, sales, mortgages, domestic relations, property rights, and succession. The reader finds among these topics many familiar principles of the law of to-day. Part II. treats the development of jurisprudence, and deals especially with the growth of the principles of the great system of Roman law, which has so influenced all other systems since its day. This is traced from its beginnings down to the time of the code of Justinian. The origin and growth of the